

REMARKS

Claims 1-6 are pending in the application. Claims 3 and 4 are withdrawn from consideration as being directed to non-elected subject matter.

PRELIMINARY MATTER:

In the Advisory Action dated November 18, 2005, the Examiner indicates that the “newly submitted amendments,” will not be entered. However, the Response filed on October 13, 2005, did not include any claim amendments.

35 U.S.C. § 103:

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants’ admitted prior art in view of U.S. Patent 6,838,051 (Marquiss).

As an initial matter, Applicants point out to the Examiner that rejections under 35 U.S.C. § 103(a) are proper only when the applied references teach or suggest each of the recited features. Claim 1 recites, *inter alia*:

“a rotating incubator rotor provided with a plurality of element chambers which are arranged along the outer periphery of the incubator rotor and each of which accommodates a dry analysis element spotted with a sample and incubates the dry analysis element and a light measuring means having a light measuring head which measures the optical density of the dry analysis element.”

The July 13, 2005 Office Action does not address the above noted features. Accordingly, based on this reason alone, the rejection of claim 1 under 35 U.S.C. § 103(a) should be withdrawn, along with the rejection of dependent claims 2, 5 and 6, at least due to their dependency.

After further review, Applicants submit that the claimed correction means can invoke 35 U.S.C. § 112, sixth paragraph. Therefore, the claimed means-plus-function aspects in regard to the correction means require the Examiner to give patentable weight to the function of the recitation (See 35 U.S.C. § 112, sixth paragraph, and MPEP § 2184). The application of a prior art reference to a means or step plus function limitation requires that the prior art perform the identical function specified in the claim (MPEP § 2182). If a prior art reference teaches the identical function specified in the claim, then the Examiner carries the initial burden of proof to show that the prior art structure is equivalent to the structure described in the specification, which has been identified as corresponding to the claimed means (MPEP § 2182).

Turning to claim 1, it is recited that:

“wherein the light measuring means is provided with a correction means which compensates for fluctuation in the value of the optical density of the dry analysis element in each of the element chambers as measured by the light measuring head generated due to a fluctuation in the distance between the light measuring head and the element chamber on the basis of a correction value which has been stored in the correction means, element chamber by element chamber.”

Marquiss does not disclose at least these features, such that the rejection should be withdrawn.

Further, there is clearly a difference between what is disclosed in Marquiss and that recited in claim 1. For example, claim 1 is drawn to a novel combination of elements that provides an incubator with features not provided by the applied art. Prior art incubators have suffered from the inability to accurately monitor a distance between a dry analysis element and a light measuring head and, thus, result in inaccurate reading. Marquiss neither acknowledges nor provides any teaching regarding a distance between the analyzed element and the light

measuring head. In particular, there is no mention of a distance between the sample 5126 in Marquiss and the applied light monitor 5122.

In summary, Marquiss fails to disclose each feature recited in claim 1, regarding at least the rotating incubator including a plurality of element chambers, in addition to the recited light measuring means that is provided with a correction means, as particularly defined in the claim.

Furthermore, claim 2 recites that the correction means is operable to set the correction value for each element chamber. By reciting that the correction means is “operable” to provide the claimed features, the physical aspects of claim 2 are inherently defined. Thus, the Examiner is requested to address each feature of claim 2. Moreover, claim 5 recites that the correction means receives a signal from the position detection section which represents a position of one of a plurality of element chambers. Applicants also submit that this feature is not taught or suggested by the applied references. The rejection under 35 U.S.C. § 103(a) should be withdrawn.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

RESPONSE UNDER 37 C.F.R. § 1.114(c)
U.S. APPLICATION NO. 10/042,319

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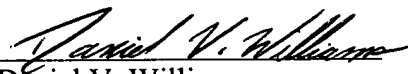
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